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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,031	06/11/2001	Roland De La Mettrie	5725.0412-01	1533

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WASHINGTON, DC 20005

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 10/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/877,031

Applicant(s)

METTRIE ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 33-67 is/are pending in the application.
- 4a) Of the above claim(s) 55-60, 62 and 64-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-54, 61 and 63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/319,208.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

1        This action is responsive to the applicant's election received by the office on August 19, 2003.

2        Applicant's election with traverse to prosecute the invention of Group I. Election of claims 33-54, 61 and 63 is acknowledged. Claims 55-60, 62 and 64-67 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Therefore, claims 33-54, 61 and 63 are pending in this application.

3        The traversal is on the ground(s) that the examiner has applied the incorrect standard for this restriction requirement and the restriction requirement should follow the U.S. standard pursuant to 35 U.S.C. 121, and also if the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to distinct or independent inventions. This is not found persuasive because the instant application is a divisional and claims priority to an earlier national stage application (09/319,167) under 35 U.S.C 371, PCT. Therefore, PCT Rules are to be applied. Further, even under U.S.C. 121, the inventions of groups I, II, III and IV are patentably independent and distinct and they are classified and searched in different classes and subclasses and the search required for each group is not required for the other groups of inventions. Therefore, restriction for examination purposes as indicated is proper. The requirement is still deemed proper and is therefore made FINAL.

4        Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

5 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-45, 47-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Tomura et al. (US 6,027,719).

Tomura (US' 719) teaches an aqueous cosmetic composition comprising uricase enzyme as 2-electron oxidoreductase, uric acid as a donor, nonionic amphiphilic polymer of polyoxyethylene glycol ether of higher alcohols such as polyoxyethylene glycol ether of stearyl alcohol, 1.5 % of para-phenylenediamine as an oxidation base, 0.12 % of m-phenylenediamine as a coupler, hydrochloride as acid addition salt as claimed in claims 33, 35-42 (see col. 2, line 67, col. 3, lines 1-4 and col. 6, Example 1), direct dyes as claimed in claim 43 (see col. 3, line 46), organic solvent of polyoxyethylene alkyl ether in the amount of 1% which within the claimed ranges as claimed in claims 34 and 44-45 (see col. 6, Example 2) and surfactants as claimed in claim 49 (see col. 3, line 42). The composition has a pH of 7, which is within the claimed ranges as claimed in claims 47-48 (see col. 3, line 24). Tomura also teaches the same method for dyeing hair as claimed in claims 50-51 (see Tomura teaches all the limitations of the instant claims. Hence, Tomura anticipates the claims.

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***Claim Rejections - 35 USC § 103***

6 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 46, 53-54, 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomura et al. (US 6,027,719).

Tomura (US' 719) teaches an aqueous cosmetic composition comprising uricase enzyme as 2-electron oxidoreductase, uric acid as a donor, nonionic amphiphilic polymer of polyoxyethylene glycol ether of higher alcohols, oxidation bases (see col. 2, line 67, col. 3, lines 1-4 and col. 6, Example 1) and organic solvent of polyoxyethylene alkyl ether in the amount of 1% (see col. 6, Example 2). Tomura also teaches a method for dyeing hair, which is similar to the claimed method as claimed in claims 53-54 and 63 (see col. 6, lines 40-49).

The instant claims differ from the reference by reciting a composition comprising optimal amount of organic solvent. Further, the reference does not teach a uricase enzyme from *Arthrobacter globiformis* as claimed in claims 61.

However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make such a composition by optimizing the amount of the organic solvent in the composition so as to get the maximum effective amount. Further, the reference teaches a uricase enzyme in the composition (see col. 6, Example 1), and therefore, a person of the ordinary skill in the art would expect that all uricase enzymes should have similar properties no matter from which sources these enzymes are derived and, thus, would expect such a

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composition to have similar properties to those claimed and could be applied by similar methods those claimed, absent, unexpected results.

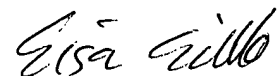
*Conclusion*

The remaining references listed on form 1449 have been reviewed by the examiner and are considered to be cumulative or less material than the prior art reference relied upon in the above rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Eisa Elhilo  
Patent Examiner  
Art Unit 1751

October 19, 2003.